



MEMORANDUM

TO: Seattle City Council, Committee on Public Safety and Human Services

CC: Council President Debora Juarez
Kerem Levitas, Office of Labor Standards
Amy Gore, Seattle City Council
Jasmine Marwaha, Seattle City Council
Karina Bull, Seattle City Council
Alex Clardy, Legislative Assistant, CM Herbold

FROM: Courtney Gillespie, Director, Government Affairs, TaskRabbit
Kay Neth, Lead Director, Government Affairs, Rover

DATE: April 20, 2022

RE: PayUp legislation (TaskRabbit and Rover stakeholder information)

Introduction

Thank you for your willingness to discuss the Rover and TaskRabbit models and communities who use our platforms in relation to the PayUp legislation. We are grateful for the opportunity to share information about our models and communities, particularly because our models and communities' experiences are "not the norm" among platforms.

We share with you the vision and values that drive the PayUp legislation, and we are committed to our responsibilities as organizations that were invited to take part in the PayUp stakeholder discussions. We also share your interest in developing successful legislation that brings accountability to platforms while still maintaining the opportunities, choices, independence, and working relationships with clients that people in Seattle have today when they use our platforms to offer services.

In addition to our participation in the recurring stakeholder meetings, we have been collaborating with Working Washington since mid-2021 to create bill language that reflects our models and communities' experiences (see attachments below for previously shared feedback). Although we have made progress with Working Washington towards a compromise — some of which appears in the introduced version of the bill — we do still believe that our communities' realities and our models are incompatible with this bill, which reflects app experiences where:

- Driving and delivery are required by the company and primary in providing the service
- The app dispatches assignments and the provider has no ability to set a price or terms for the work
- There is no meaningful way for the provider to provide the service without an app
- There is no relationship between the client and the person providing the service

Our models and our community experiences are the opposite of that, which is why originally, to protect our communities' options and working relationships with their clients, we recommend creating another path for compliance with the law by introducing a high standard that marketplace apps would have to meet. If a company failed to meet that high standard, then they would be subject to the rest of the provisions of the bill. This standard would ensure the bill applies to — and brings accountability to — **all platforms**, while also being clear, succinct, understandable, enforceable, and protective of Seattle constituents' options and opportunities. That remains our option 1. We would welcome the opportunity to discuss and propose related language.

However, to the extent the existing bill is applied to our communities, we have, as noted, been working in good faith with Working Washington. Although some amendments reflecting these compromises are in the introduced version of the bill, other language is not. For example, two key amendments — the definitions of marketplace network company and non-exclusive engaged time — were altered in ways that will 1) interfere with the choices that people who use our websites and apps are free to make regarding their services and, as written, 2) will require us to exercise more control in a manner detrimental to users:

- The bill would require us to validate the time that community members spend on each service, which, in order to do, will require live geo-tracking or other methods of reporting and control.
- The bill does not account for home-based services such as boarding, day care, and house-sitting, where service time can be sporadic and non-linear, and where the sitter is in the best position to estimate the amount of effort relative to the price they set.
- The bill does not account for situations where a pet sitter simultaneously provides services to multiple pets (including from clients who may be sourced through means other than Rover).
- The bill would not give community members the flexibility to offer or accept a single service within 2 hours of its start time without invalidating our status as a marketplace network company.

The TaskRabbit and Rover models and communities

Our websites and apps function as online business directories with added tools and advantages that appeal to people who want to at least occasionally take on independent projects (pet care projects in the case of Rover and home projects in the case of TaskRabbit). These tools and advantages include, for example, 24-7 access to customer service staff, as well as built-in functionality for communication, booking, and payment between people performing these services and their clients. The services our community offers are comparable to the services people offer in the fully offline economy—or informal, underground economy. As such, they price and structure their services in ways that are comparable to how the services would be priced and structured if they weren't using our website and app, for both consistency, ease, and to be competitive in their offerings with respect to the fully offline or underground/informal economy.

In a very real sense, our websites and apps meet a need to connect people with potential clients with added protections that neither service providers or clients receive on classified advertisement websites, for example.

Rover and TaskRabbit do not dispatch or “assign” work to users or present offers that users must then race to accept or reject without being able to first influence or even find out what the work would involve.

Instead, people who have a home project need (TaskRabbit) or a pet they want to find care for (Rover) visit our websites or apps, see the pages/profiles that other community members have set up describing the services they offer and their rates, and then reach out to those community members to ask to book with them whether they are interested in taking on the project. From there, the person making the request and the person offering services can discuss arrangements. The person considering whether to do the project can ask the questions that they want to ask, suggest changes, and determine their rate, based on their preferences and what they conclude is warranted—all before deciding whether to take on the client.

Rover and TaskRabbit do not conduct real-time monitoring or interfere with the thousands of conversations that occur between people who are discussing services. (Some conversations might even occur off the website and app before the prospective client and the person taking on the project agree to make the booking.)

This framework—where a client and someone potentially taking on a project talk to each other, and where that person ultimately chooses whether to make a booking, including the rates and conditions of work—is perhaps unusual among platforms but is part of the standards of traditional self-employment/independent contractor experience.

Earnings data

Rover and TaskRabbit community members routinely have earnings that exceed the rates that would be

established by the PayUp legislation.

In the case of TaskRabbit, individuals interested in offering independent home services set their own rates and take home 100% of tips, and the current average is at least \$0.75/minute. In addition to their rate, Taskers determine where, how, and with whom they perform tasks, scope services directly with the client, and invoice clients directly through the platform. TaskRabbit does not monitor offer negotiations/communications between Taskers and clients, and does not track engaged time or engaged miles.

Rover users who want to take care of pets in their communities set their rates and retain 100% of their tips. In 2021, community members who listed 30-minute dog walks on their “pages” or profiles on the website/app on average earned approximately \$0.54/minute for those walks exclusive of any tips, while the average earnings for people who listed 30-minute pet check-in visits was approximately \$0.65/minute for those visits. Note that people using Rover also offer the kinds of pet care that pet caregivers (regardless of whether they're using Rover) aren't typically choosing to price or approximate by the minute, such as hosting a pet overnight or for a full day in their home. As is the case when they are walking a dog or checking in on a pet, they set their rates based on what they think is appropriate and can take into account the number of clients they accommodate in any given time period (including clients not found via Rover) and their ability to simultaneously such as work, run errands, or engage in other meaningful activities. Because community members are setting increasingly higher prices, average earnings for each pet care service line on the platform have increased over time.

Proposed updates to the PayUp legislation

Approach 1

As stated earlier, rather than broadly revising the entire bill to address the logistics and facts related our communities, we would welcome opportunity to develop with you more fully protective language for our communities' options and working relationships with their clients. We recommend creating another path for compliance with the law. If a company failed to meet that high standard, then they would be subject to the rest of the provisions of the bill. This standard would ensure the bill applies to — and brings accountability to — all platforms, while also being clear, succinct, understandable, enforceable, and protective of Seattle constituents' options and opportunities.

This language would apply only to marketplace platforms that enable users to set their own prices and that satisfy other requirements demonstrating real user autonomy, such as communicating directly with clients and controlling the performance of their own work. The standard would be satisfied only when people are truly independent. A qualifying platform could still be subject to certain sections of the legislation, but would not be forced to overhaul its model and impose new requirements that are designed to address concerns focused on delivery platforms and other models that exercise significant control over how services are performed, dictate prices to their users, and require users to perform services while logged into an app.

Under this standard, a platform that enables users to set their own prices would provide reference information to further help users make thoughtful and informed choices about their rates, but users would not be forced to impose mandatory, per-minute rates and tracking that deprive community members of their own decision making related to the variety of services they offer to the clients with whom they choose to work. Such reference information could include Seattle's minimum wage as well as the PayUp legislation's “self-employed minimum wage”. As has always been the case, we want people to be empowered to make positive choices for themselves, to determine their rates and what a particular project involves.

Approach 2

Below for your consideration are proposed amendments to the “marketplace network company” definition and connected definitions/sections in the PayUp ordinance. As noted earlier, Working Washington has agreed with Rover and TaskRabbit on many of the updates, while others are still being discussed.

1. Amend Marketplace Network Company definition (Section 8.37.020)

“Marketplace network company” means a network company that (1) is ~~primarily exclusively~~ engaged in facilitating pre-scheduled offers in which the prospective customer and worker exchange information regarding the scope and details of services to be performed prior to the customer placing the online order for those services or the app-based worker accepting the offer, and (2) ~~primarily exclusively~~ facilitates services that can be performed without the network company monitoring offers by geographic location, mileage, or time. On-demand network companies and companies that primarily provide delivery services are not marketplace network companies.

- The addition of this proposed definition is intended to capture those network companies which 1) prioritize direct communication between workers and customers, who negotiate the terms of an offer in advance, and 2) do not monitor a worker’s engaged time nor miles.
- This proposed definition appears in two places in the bill, 1) the definition of “engaged miles” and 2) the Application of Minimum Compensation section.
 - Engaged miles: Adding the definition of marketplace network company to the definition of engaged miles ensures that companies that do not currently 1) track engaged miles or geolocate nor 2) intervene in pre-scheduled offer negotiations between workers and customers, to continue to do so.
 - Application of minimum compensation: Adding the definition of marketplace network company to the Application of Minimum Compensation allows companies that enable workers and customers to negotiate the terms of an offer, including the rate for engaged and non-exclusive engaged time, directly and in advance, to continue to do so.
- With the addition of this definition, marketplace network companies would still be required to comply with minimum compensation, transparency and flexibility standards in the bill. Importantly, the workers who find work through marketplace network companies would continue to do so without new, onerous self-reporting requirements, time and mileage tracking, nor company intervention in negotiations with clients.
- Excluding offers facilitated by marketplace network companies from the “engaged miles” definition allows workers to continue to negotiate the terms of an offer - including their worker’s self-set rate and potential mileage, if any, associated with a service - directly with a client.
- The above amendments give community members the flexibility to offer or accept a single service within 2 hours of its start time without invalidating our status as a marketplace network company.

2. Amend “engaged time” definition (Section 8.37.020)

“Engaged time” means the period of time in which an app-based worker performs services in furtherance of an offer facilitated or presented by a network company or participates in any training program required by a network company that exceeds two hours. Engaged time begins and ends as described below:

1. If an offer is being facilitated or presented by an on-demand network company, or is an on-demand offer, “engaged time” begins upon the app-based worker’s acceptance of the offer and ends upon the app-based worker’s completing performance of the offer, cancellation of the offer by the network company or customer, or cancellation with cause of the app-based worker’s acceptance of the offer pursuant to subsection 8.37.080.C.
2. If an offer is being facilitated or presented by a marketplace network company, “engaged time” is the reasonable estimate of engaged time required to perform the

offer as mutually agreed by the marketplace network company or customer and the app-based worker when the offer is accepted. Engaged time may be non-consecutive and/or performed flexibly during an agreed upon range of time and is subject to rulemaking regarding offers that are cancelled with cause. For an offer involving engaged time that is non-consecutive and/or performed flexibly, the offer may satisfy the reasonable estimate of engaged time requirement by listing the range of time and compensation equivalent to at least one hour of engaged time in any 24-hour period.

3. In all other circumstances, “engaged time” begins when the app-based worker begins performance of the offer or when the app-based worker reports to a location designated in the offer. Engaged time ends upon the app-based worker’s completing performance of the offer, cancellation of the offer by the network company or customer, or cancellation with cause of the app-based worker’s acceptance of the offer pursuant to subsection 8.37.080.C.

Subject to the foregoing, ~~t~~The Director may issue rules on “engaged time” for (a) offers with non-compensable time, such as sleep time or other periods of off-duty time; or (b) offers with periods of time when the worker is not completely relieved of the duty to perform services and cannot use the time effectively for their own purposes.

3. Clarify language regarding compensation (Section 8.37.050.A, 8.37.050.B, and related provisions)

A. For each offer resulting in engaged time or engaged miles, ~~a network company shall compensate~~ app-based workers shall be compensated, and/or ensure app-based workers receive, at least the equivalent of a minimum network company payment that is the greater of either: . . .

B. Minimum network company payment calculation

1. Per-minute amount. For each minute of engaged time, ~~a network company shall compensate~~ app-based workers shall be compensated, and/or ensure that app-based workers receive, at least the equivalent of the total of the minimum wage equivalent rate multiplied by the associated cost factor multiplied by the associated time factor. In 2022, the per-minute amount is \$0.39. . . .

4. Amend “pre-scheduled offer” definition (Section 8.37.020)

“Pre-scheduled offer” means an offer that is facilitated or presented by a network company to an app-based worker at least two hours prior to when the app-based worker is required by the network company to initiate performance.

5. Amend “effect on other laws” provisions (Section 8.37.240)

A. The provisions of this Chapter 8.37:

1. Supplement and do not diminish or replace any other basis of liability or requirement established by statute or common law;
2. Shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard for minimum labor and compensation requirements, or which extends other protections to app-based workers; and

3. Shall not be interpreted or applied so as to create any power or duty in conflict with federal or state law.

B. This Chapter 8.37 shall not be construed to preclude any person aggrieved from seeking judicial review of any final administrative decision or order made under this Chapter 8.37 affecting such person. Nothing in this Section 8.37.240 shall be construed as restricting an app-based worker's right to pursue any other remedies at law or equity for violation of the contractor's rights.

C. A network company's failure to comply with the provisions of this Chapter 8.37 shall not render any contract between the network company and an app-based worker void or voidable.

D. ~~This Chapter 8.37 is not intended to and shall not affect questions related to worker status. Compliance with the requirements of this Chapter 8.37 shall not be considered in any determinations related to an app-based worker's status as an employee, an independent contractor, or otherwise. No provision of this Chapter 8.37 shall be construed as providing a determination about the legal classification of any individual as an employee or independent contractor.~~

6. Amend timing of receipt requirement (Section 8.37.070.B and related provisions)

B. Within ~~48~~²⁴ hours of each offer's performance or cancellation with cause, a network company shall transmit an electronic receipt to the app-based worker that contains the following information for each unique offer covered by this Chapter 8.37: . . .

7. Amend weekly receipt provision for marketplace network companies (Section 8.37.070.C and related provisions)

C. On a weekly basis, the network company, ~~other than a marketplace network company~~, shall provide written notice to the app-based worker that contains the following information for offers covered by this Chapter 8.37 and which were performed or cancelled with cause, as well as other engagement with the worker platform, during the prior week: . . .

8. Effective date and timing of OLS rule making (Section 7)

- We appreciate the inclusion of a 12-month effective date, which recognizes the significant time and burdens that would be required to implement the numerous changes contemplated by this bill, as well as future bills on related topics.
- One outstanding challenge is that the bill directs OLS to promulgate rules on critical topics that must be resolved before changes can be made. OLS has indicated that it may require 9 months to issue final rules. As a practical matter, this would result in only 3 months to implement changes and to make sure the experiences of community members are not harmed or disrupted. To avoid these adverse effects for community members, we request that the 12-month effective date be either be extended or begin upon the finalization of rules by OLS.

9. Clarify deductions language (Section 8.37.050.D)

D. Deductions

1. A network company may only deduct compensation when the app-based worker

expressly authorizes the deduction in writing and does so in advance for a lawful purpose for the benefit of the app-based worker. Any such authorization by an app-based worker must be voluntary and knowing.

2. Neither the network company nor any person acting in the interest of the network company may derive any financial profit or benefit from any of the deductions under this subsection 8.37.050.D. For the purposes of this subsection 8.37.050.D, reasonable interest charged by the network company, or any person acting in the interest of a network company, for a loan or credit extended to the app-based worker is not considered to be of financial benefit to the network company, or any person acting in the interest of a network company.

3. A network company may deduct a fee for use of its platform so long as the fee is clearly notified to the app-based worker at the time the worker signs up to provide services via the platform or, at a later date or otherwise in accordance with subsection 8.37.070.H. For purposes of compliance with the minimum pay standard set forth in this section 8.37.050, compensation to an app-based worker will be measured net of the subtraction of any such fee.

10. Amend language and translation requirements (Section 8.37.100.C)

C. Network companies shall provide the notice of rights required by subsection 8.37.100.B in an electronic format that is readily accessible to the app-based worker. The notice of rights shall be made available to the app-based worker via smartphone application, email, or online web portal, in English ~~and any language that the network company knows or has reason to know is the primary language of the app-based worker.~~ The Director may issue rules governing the form and content of the notice of rights, the manner of its distribution, and required languages for its translation.

11. Clarification of how workers may indicate rejection of an offer (Section 8.37.080.A.2)

- The current bill contemplates that workers may indicate rejection of an offer “by declining to respond to the offer.” This is a common practice in online marketplaces like Rover and TaskRabbit where individual users communicate directly between themselves. Outstanding questions remain about how the bill’s provisions would affect the ability of individual users to communicate on their own timeline, which may vary significantly from the way drivers may accept or reject offers from an on-demand network company on a rapid basis.

Attachments:

[December 22, 2021 email](#)

[March 18, 2022 email](#)

- [Memorandum](#)
- [Redlined draft](#)